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COURT OF APPEALS  
DIVISION II

2016 APR -8 PM 1:00

STATE OF WASHINGTON

BY AP  
DEPUTY

IN THE COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

NO. 48045-0-II

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LORETTA LESURE, a single woman,

Plaintiff/Appellant

vs.

FARMERS INSURANCE COMPANY OF WASHINGTON,  
A domestic corporation and a Washington State Stock Insurer,

Defendant/Respondent

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**REPLY BRIEF OF APPELLANT**

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**A. REPLY ARGUMENT**

**1. The Fire is the Efficient Proximate Cause of the Loss, Not the Rider “deleting” the Building Ordinance Exclusion.**

FARMER’S argues that the rider to the policy **limits** FARMER’S coverage for the insured peril. The irony of this position lay in the reality that without LORETTA LESURE having purchased the rider “deleting” the building code exclusion, the efficient proximate cause rule would have unquestionably extended coverage to all of her losses, solely because the fire was the insured peril and the primary cause of her loss.

Consequently, under FARMER’S argument, neither the fire nor the building code can be understood as the efficient proximate cause of Mrs. Lesure’s loss. Rather, her cruel fate is sealed by the policy rider, which FARMER’S sold to her for an additional fee. Billed to her by FARMER’S as a “deletion” of the building ordinance exclusion, the rider alone is the efficient proximate cause of her loss. CP. 144.

On this point, our Supreme Court has vigorously established the efficient proximate rule as the law of the land. In *Vision One, LLC v. Philadelphia Indemnity Ins. Co.*, 167 Wn.2d 502, 519, 276 P.3d 300 (2012), the Supreme Court, *en banc*, held:

The efficient proximate cause rule applies only when two or more perils combine in sequence to cause a loss and a *covered peril* is the predominant or efficient cause of the loss. *McDonald*,

119 Wash.2d at 732, 837 P.2d 1000; *Kish v. Ins. Co. of N. Am.*, 125 Wash.2d 164, 170, 883 P.2d 308 (1994). In such a situation, the efficient proximate cause rule mandates coverage, even if an excluded event appears in the chain of causation that ultimately produces the loss. *Safeco Ins. Co. of Am. v. Hirschmann*, 112 Wash.2d 621, 628, 773 P.2d 413 (1989). The efficient proximate cause rule operates as an interpretive tool to establish coverage when a covered peril “sets other causes into motion which, in an unbroken sequence, produce the result for which recovery is sought.” *McDonald*, 119 Wash.2d at 731, 837 P.2d 1000.

¶ 42 The opposite proposition, however, is not a rule of law. When an *excluded peril* sets in motion a causal chain that includes covered perils, the efficient proximate cause rule does *not* mandate exclusion of the loss. *Key Tronic Corp.*, 125 Wash.2d at 626, 881 P.2d 201. We explained in *Key Tronic Corp.*:

The insurer here reasons that the converse of this rule should apply, *i.e.*, where an excluded risk sets in motion a causal chain, coverage should be precluded as to all the causal events in the chain. As *Key Tronic* aptly points out, however, the efficient proximate cause rule operates in favor of coverage. A converse rule would, of course, operate in favor of no coverage.

## B. CONCLUSION

The fire, a covered peril, caused Mrs. Lesure’s house to be declared a total loss in light of building code upgrades, an excluded peril. The fire, therefore, is the efficient proximate cause of her loss, and the exclusion for building code upgrades has no adverse effect upon her claim. The rider, which FARMER’S sold her for additional consideration, limits FARMER’S responsibility for building code upgrade liability to 10% of the face amount of the policy, but does not operate to erode FARMER’S

duties under the law since the fire is the efficient proximate cause of her loss, rather than the rider. If this were so, then the rider itself becomes the efficient proximate cause of her loss, which result is contrary to law, public policy and the purpose of insurance.

Whether an exclusion, or a rider which “deleted” the exclusion and replaces it with partial exclusion, is a secondary cause in the chain of causation, the insured peril remains the efficient proximate cause, thus mandating coverage.

DATED this 7 day of April, 2016.

Respectfully submitted,

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Loretta Lesure

Appellant,

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**DECLARATION OF  
MAILING**

KM GERDTS declares under penalty of perjury of the laws of the State of Washington, that on this day she deposited in the mails of the United States of America a properly stamped and addressed envelope containing an original and one copy of Reply Brief of Appellant addressed to David C. Ponzoha, Court Clerk, WA State Court of Appeals II, 950 Broadway, Ste 300, Tacoma WA 98402-4454.

A copy of the Reply Brief of Appellant and this Declaration of Mailing were mailed to Lether & Associates, PLLC, 1848 Westlake Ave N, Ste 100, Seattle WA 98109, attorneys for Farmers Insurance Company of Washington,

DATED at Port Angeles, Washington, this 7 day APRIL, 2016.

KM Gerdt  
Legal Secretary to Lane J. Wolfley,  
Attorney for Appellant

DECLARATION OF MAILING